

Calendar No. 372

109TH CONGRESS
2D SESSION**S. 1608****[Report No. 109–219]**

To enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2005

Mr. SMITH (for himself, Mr. MCCAIN, Mr. INOUE, and Mr. NELSON of Florida, Mr. DORGAN, Mr. BURNS, and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MARCH 14, 2006

Reported by Mr. STEVENS, without amendment

A BILL

To enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Undertaking Spam, Spyware, And Fraud Enforcement

1 With Enforcers beyond Borders Act of 2005” or the “U.S.
2 SAFE WEB Act of 2005”.

3 (b) FINDINGS.—The Congress finds the following:

4 (1) The Federal Trade Commission protects
5 consumers from fraud and deception. Cross-border
6 fraud and deception are growing international prob-
7 lems that affect American consumers and busi-
8 nesses.

9 (2) The development of the Internet and im-
10 provements in telecommunications technologies have
11 brought significant benefits to consumers. At the
12 same time, they have also provided unprecedented
13 opportunities for those engaged in fraud and decep-
14 tion to establish operations in one country and vic-
15 timize a large number of consumers in other coun-
16 tries.

17 (3) An increasing number of consumer com-
18 plaints collected in the Consumer Sentinel database
19 maintained by the Commission, and an increasing
20 number of cases brought by the Commission, involve
21 foreign consumers, foreign businesses or individuals,
22 or assets or evidence located outside the United
23 States.

24 (4) The Commission has legal authority to rem-
25 edy law violations involving domestic and foreign

1 wrongdoers, pursuant to the Federal Trade Commis-
2 sion Act. The Commission’s ability to obtain effec-
3 tive relief using this authority, however, may face
4 practical impediments when wrongdoers, victims,
5 other witnesses, documents, money and third parties
6 involved in the transaction are widely dispersed in
7 many different jurisdictions. Such circumstances
8 make it difficult for the Commission to gather all
9 the information necessary to detect injurious prac-
10 tices, to recover offshore assets for consumer re-
11 dress, and to reach conduct occurring outside the
12 United States that affects United States consumers.

13 (5) Improving the ability of the Commission
14 and its foreign counterparts to share information
15 about cross-border fraud and deception, to conduct
16 joint and parallel investigations, and to assist each
17 other is critical to achieve more timely and effective
18 enforcement in cross-border cases.

19 (c) PURPOSE.—The purpose of this Act is to enhance
20 the ability of the Federal Trade Commission to protect
21 consumers from illegal spam, spyware, and cross-border
22 fraud and deception and other consumer protection law
23 violations.

1 **SEC. 2. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.**

2 Section 4 of the Federal Trade Commission Act (15
3 U.S.C. 44) is amended by adding at the end the following:

4 “‘Foreign law enforcement agency’ means—

5 “(1) any agency or judicial authority of a for-
6 eign government, including a foreign state, a polit-
7 ical subdivision of a foreign state, or a multinational
8 organization constituted by and comprised of foreign
9 states, that is vested with law enforcement or inves-
10 tigative authority in civil, criminal, or administrative
11 matters; and

12 “(2) any multinational organization, to the ex-
13 tent that it is acting on behalf of an entity described
14 in paragraph (1).”.

15 **SEC. 3. AVAILABILITY OF REMEDIES.**

16 Section 5(a) of the Federal Trade Commission Act
17 (15 U.S.C. 45(a)) is amended by adding at the end the
18 following:

19 “(4)(A) For purposes of subsection (a), the
20 term ‘unfair or deceptive acts or practices’ includes
21 such acts or practices involving foreign commerce
22 that—

23 “(i) cause or are likely to cause reasonably
24 foreseeable injury within the United States; or

25 “(ii) involve material conduct occurring
26 within the United States.

1 “(B) All remedies available to the Commission
 2 with respect to unfair and deceptive acts or practices
 3 shall be available for acts and practices described in
 4 this paragraph, including restitution to domestic or
 5 foreign victims.”.

6 **SEC. 4. POWERS OF THE COMMISSION.**

7 (a) PUBLICATION OF INFORMATION; REPORTS.—Sec-
 8 tion 6(f) of the Federal Trade Commission Act (15 U.S.C.
 9 46(f)) is amended—

10 (1) by inserting “(1)” after “such information”
 11 the first place it appears; and

12 (2) by striking “purposes.” and inserting “pur-
 13 poses, and (2) to any officer or employee of any for-
 14 eign law enforcement agency under the same cir-
 15 cumstances that making material available to foreign
 16 law enforcement agencies is permitted under section
 17 21(b).”.

18 (b) OTHER POWERS OF THE COMMISSION.—Section
 19 6 of the Federal Trade Commission Act (15 U.S.C. 46)
 20 is further amended by inserting after subsection (i) and
 21 before the proviso the following:

22 “(j) INVESTIGATIVE ASSISTANCE FOR FOREIGN LAW
 23 ENFORCEMENT AGENCIES.—

24 “(1) IN GENERAL.—Upon a written request
 25 from a foreign law enforcement agency to provide

1 assistance in accordance with this subsection, if the
2 requesting agency states that it is investigating, or
3 engaging in enforcement proceedings against, pos-
4 sible violations of laws prohibiting fraudulent or de-
5 ceptive commercial practices, or other practices sub-
6 stantially similar to practices prohibited by any pro-
7 vision of the laws administered by the Commission,
8 other than Federal antitrust laws (as defined in sec-
9 tion 12(5) of the International Antitrust Enforce-
10 ment Assistance Act of 1994 (15 U.S.C. 6211(5))),
11 to provide the assistance described in paragraph (2)
12 without requiring that the conduct identified in the
13 request constitute a violation of the laws of the
14 United States.

15 “(2) TYPE OF ASSISTANCE.—In providing as-
16 sistance to a foreign law enforcement agency under
17 this subsection, the Commission may—

18 “(A) conduct such investigation as the
19 Commission deems necessary to collect informa-
20 tion and evidence pertinent to the request for
21 assistance, using all investigative powers au-
22 thorized by this Act; and

23 “(B) when the request is from an agency
24 acting to investigate or pursue the enforcement
25 of civil laws, or when the Attorney General re-

1 fers a request to the Commission from an agen-
2 cy acting to investigate or pursue the enforce-
3 ment of criminal laws, seek and accept appoint-
4 ment by a United States district court of Com-
5 mission attorneys to provide assistance to for-
6 eign and international tribunals and to litigants
7 before such tribunals on behalf of a foreign law
8 enforcement agency pursuant to section 1782 of
9 title 28, United States Code.

10 “(3) CRITERIA FOR DETERMINATION.—In de-
11 ciding whether to provide such assistance, the Com-
12 mission shall consider all relevant factors, includ-
13 ing—

14 “(A) whether the requesting agency has
15 agreed to provide or will provide reciprocal as-
16 sistance to the Commission;

17 “(B) whether compliance with the request
18 would prejudice the public interest of the
19 United States; and

20 “(C) whether the requesting agency’s in-
21 vestigation or enforcement proceeding concerns
22 acts or practices that cause or are likely to
23 cause injury to a significant number of persons.

24 “(4) INTERNATIONAL AGREEMENTS.—If a for-
25 eign law enforcement agency has set forth a legal

1 basis for requiring execution of an international
2 agreement as a condition for reciprocal assistance,
3 or as a condition for provision of materials or infor-
4 mation to the Commission, the Commission, with
5 prior approval and ongoing oversight of the Sec-
6 retary of State, and with final approval of the agree-
7 ment by the Secretary of State, may negotiate and
8 conclude an international agreement, in the name of
9 either the United States or the Commission, for the
10 purpose of obtaining such assistance, materials, or
11 information. The Commission may undertake in
12 such an international agreement to—

13 “(A) provide assistance using the powers
14 set forth in this subsection;

15 “(B) disclose materials and information in
16 accordance with subsection (f) and section
17 21(b); and

18 “(C) engage in further cooperation, and
19 protect materials and information received from
20 disclosure, as authorized by this Act.

21 “(5) ADDITIONAL AUTHORITY.—The authority
22 provided by this subsection is in addition to, and not
23 in lieu of, any other authority vested in the Commis-
24 sion or any other officer of the United States.

1 “(6) LIMITATION.—The authority granted by
 2 this subsection shall not authorize the Commission
 3 to take any action or exercise any power with re-
 4 spect to a bank, a savings and loan institution de-
 5 scribed in section 18(f)(3) (15 U.S.C. 57a(f)(3)), a
 6 Federal credit union described in section 18(f)(4)
 7 (15 U.S.C. 57a(f)(4)), or a common carrier subject
 8 to the Act to regulate commerce, except in accord-
 9 ance with the undesignated proviso following the last
 10 designated subsection of section 6 (15 U.S.C. 46).

11 “(7) ASSISTANCE TO CERTAIN COUNTRIES.—
 12 The Commission may not provide investigative as-
 13 sistance under this subsection to a foreign law en-
 14 forcement agency from a foreign state that the Sec-
 15 retary of State has determined, in accordance with
 16 section 6(j) of the Export Administration Act of
 17 1979 (50 U.S.C. App. 2405(j)), has repeatedly pro-
 18 vided support for acts of international terrorism, un-
 19 less and until such determination is rescinded pursu-
 20 ant to section 6(j)(4) of that Act (50 U.S.C. App.
 21 2405(j)(4)).

22 “(k) REFERRAL OF EVIDENCE FOR CRIMINAL PRO-
 23 CEEDINGS.—

24 “(1) IN GENERAL.—Whenever the Commission
 25 obtains evidence that any person, partnership, or

1 corporation, either domestic or foreign, has engaged
2 in conduct that may constitute a violation of Federal
3 criminal law, to transmit such evidence to the Attor-
4 ney General, who may institute criminal proceedings
5 under appropriate statutes. Nothing in this para-
6 graph affects any other authority of the Commission
7 to disclose information.

8 “(2) INTERNATIONAL INFORMATION.—The
9 Commission shall endeavor to ensure, with respect to
10 memoranda of understanding and international
11 agreements it may conclude, that material it has ob-
12 tained from foreign law enforcement agencies acting
13 to investigate or pursue the enforcement of foreign
14 criminal laws may be used for the purpose of inves-
15 tigation, prosecution, or prevention of violations of
16 United States criminal laws.

17 “(1) EXPENDITURES FOR COOPERATIVE ARRANGE-
18 MENTS.—To expend appropriated funds for—

19 “(1) operating expenses and other costs of bi-
20 lateral and multilateral cooperative law enforcement
21 groups conducting activities of interest to the Com-
22 mission and in which the Commission participates;
23 and

24 “(2) expenses for consultations and meetings
25 hosted by the Commission with foreign government

1 agency officials, members of their delegations, ap-
2 propriate representatives and staff to exchange views
3 concerning developments relating to the Commis-
4 sion's mission, development and implementation of
5 cooperation agreements, and provision of technical
6 assistance for the development of foreign consumer
7 protection or competition regimes, such expenses to
8 include necessary administrative and logistic ex-
9 penses and the expenses of Commission staff and
10 foreign invitees in attendance at such consultations
11 and meetings including—

12 “(A) such incidental expenses as meals
13 taken in the course of such attendance;

14 “(B) any travel and transportation to or
15 from such meetings; and

16 “(C) any other related lodging or subsist-
17 ence.”.

18 (c) AUTHORIZATION OF APPROPRIATIONS.—The
19 Federal Trade Commission is authorized to expend appro-
20 priated funds not to exceed \$100,000 per fiscal year for
21 purposes of section 6(l) of the Federal Trade Commission
22 Act (15 U.S.C. 46(l)) (as added by subsection (b) of this
23 section), including operating expenses and other costs of
24 the following bilateral and multilateral cooperative law en-
25 forcement agencies and organizations:

1 (1) The International Consumer Protection and
2 Enforcement Network.

3 (2) The International Competition Network.

4 (3) The Mexico-U.S.-Canada Health Fraud
5 Task Force.

6 (4) Project Emptor.

7 (5) The Toronto Strategic Partnership and
8 other regional partnerships with a nexus in a Cana-
9 dian province.

10 (d) CONFORMING AMENDMENT.—Section 6 of the
11 Federal Trade Commission Act (15 U.S.C. 46) is amended
12 by striking “clauses (a) and (b)” in the proviso following
13 subsection (l) (as added by subsection (b) of this section)
14 and inserting “subsections (a), (b), and (j)”.

15 **SEC. 5. REPRESENTATION IN FOREIGN LITIGATION.**

16 Section 16 of the Federal Trade Commission Act (15
17 U.S.C. 56) is amended by adding at the end the following:

18 “(c) FOREIGN LITIGATION.—

19 “(1) COMMISSION ATTORNEYS.—With the con-
20 currence of the Attorney General, the Commission
21 may designate Commission attorneys to assist the
22 Attorney General in connection with litigation in for-
23 eign courts on particular matters in which the Com-
24 mission has an interest.

1 “(2) REIMBURSEMENT FOR FOREIGN COUN-
2 SEL.—The Commission is authorized to expend ap-
3 propriated funds, upon agreement with the Attorney
4 General, to reimburse the Attorney General for the
5 retention of foreign counsel for litigation in foreign
6 courts and for expenses related to litigation in for-
7 eign courts in which the Commission has an interest.

8 “(3) LIMITATION ON USE OF FUNDS.—Nothing
9 in this subsection authorizes the payment of claims
10 or judgments from any source other than the perma-
11 nent and indefinite appropriation authorized by sec-
12 tion 1304 of title 31, United States Code.

13 “(4) OTHER AUTHORITY.—The authority pro-
14 vided by this subsection is in addition to any other
15 authority of the Commission or the Attorney Gen-
16 eral.”.

17 **SEC. 6. SHARING INFORMATION WITH FOREIGN LAW EN-**
18 **FORCEMENT AGENCIES.**

19 (a) MATERIAL OBTAINED PURSUANT TO COMPUL-
20 SORY PROCESS.—Section 21(b)(6) of the Federal Trade
21 Commission Act (15 U.S.C. 57b–2(b)(6)) is amended by
22 adding at the end “The custodian may make such material
23 available to any foreign law enforcement agency upon the
24 prior certification of an appropriate official of any such
25 foreign law enforcement agency, either by a prior agree-

1 ment or memorandum of understanding with the Commis-
2 sion or by other written certification, that such material
3 will be maintained in confidence and will be used only for
4 official law enforcement purposes, if—

5 “(A) the foreign law enforcement agency has
6 set forth a bona fide legal basis for its authority to
7 maintain the material in confidence;

8 “(B) the materials are to be used for purposes
9 of investigating, or engaging in enforcement pro-
10 ceedings related to, possible violations of—

11 “(i) foreign laws prohibiting fraudulent or
12 deceptive commercial practices, or other prac-
13 tices substantially similar to practices prohib-
14 ited by any law administered by the Commis-
15 sion;

16 “(ii) a law administered by the Commis-
17 sion, if disclosure of the material would further
18 a Commission investigation or enforcement pro-
19 ceeding; or

20 “(iii) with the approval of the Attorney
21 General, other foreign criminal laws, if such
22 foreign criminal laws are offenses defined in or
23 covered by a criminal mutual legal assistance
24 treaty in force between the government of the

1 United States and the foreign law enforcement
2 agency's government;

3 “(C) the appropriate Federal banking agency
4 (as defined in section 3(q) of the Federal Deposit
5 Insurance Act (12 U.S.C. 1813(q)) or, in the case
6 of a Federal credit union, the National Credit Union
7 Administration, has given its prior approval if the
8 materials to be provided under subparagraph (B)
9 are requested by the foreign law enforcement agency
10 for the purpose of investigating, or engaging in en-
11 forcement proceedings based on, possible violations
12 of law by a bank, a savings and loan institution de-
13 scribed in section 18(f)(3) of the Federal Trade
14 Commission Act (15 U.S.C. 57a(f)(3)), or a Federal
15 credit union described in section 18(f)(4) of the Fed-
16 eral Trade Commission Act (15 U.S.C. 57a(f)(4));
17 and

18 “(D) the foreign law enforcement agency is not
19 from a foreign state that the Secretary of State has
20 determined, in accordance with section 6(j) of the
21 Export Administration Act of 1979 (50 U.S.C. App.
22 2405(j)), has repeatedly provided support for acts of
23 international terrorism, unless and until such deter-
24 mination is rescinded pursuant to section 6(j)(4) of
25 that Act (50 U.S.C. App. 2405(j)(4)).

1 Nothing in the preceding sentence authorizes the disclo-
 2 sure of material obtained in connection with the adminis-
 3 tration of the Federal antitrust laws or foreign antitrust
 4 laws (as defined in paragraphs (5) and (7), respectively,
 5 of section 12 of the International Antitrust Enforcement
 6 Assistance Act of 1994 (15 U.S.C. 6211)) to any officer
 7 or employee of a foreign law enforcement agency.”.

8 (b) INFORMATION SUPPLIED BY AND ABOUT FOR-
 9 EIGN SOURCES.—Section 21(f) of the Federal Trade Com-
 10 mission Act (15 U.S.C. 57b–2(f)) is amended to read as
 11 follows:

12 “(f) EXEMPTION FROM PUBLIC DISCLOSURE.—

13 “(1) IN GENERAL.—Any material which is re-
 14 ceived by the Commission in any investigation, a
 15 purpose of which is to determine whether any person
 16 may have violated any provision of the laws adminis-
 17 tered by the Commission, and which is provided pur-
 18 suant to any compulsory process under this Act or
 19 which is provided voluntarily in place of such com-
 20 pulsory process shall not be required to be disclosed
 21 under section 552 of title 5, United States Code, or
 22 any other provision of law, except as provided in
 23 paragraph (2)(B) of this section.

24 “(2) MATERIAL OBTAINED FROM A FOREIGN
 25 SOURCE.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B) of this paragraph, the Com-
3 mission shall not be required to disclose under
4 section 552 of title 5, United States Code, or
5 any other provision of law—

6 “(i) any material obtained from a for-
7 eign law enforcement agency or other for-
8 eign government agency, if the foreign law
9 enforcement agency or other foreign gov-
10 ernment agency has requested confidential
11 treatment, or has precluded such disclosure
12 under other use limitations, as a condition
13 of providing the material;

14 “(ii) any material reflecting a con-
15 sumer complaint obtained from any other
16 foreign source, if that foreign source sup-
17 plying the material has requested confiden-
18 tial treatment as a condition of providing
19 the material; or

20 “(iii) any material reflecting a con-
21 sumer complaint submitted to a Commis-
22 sion reporting mechanism sponsored in
23 part by foreign law enforcement agencies
24 or other foreign government agencies.

1 “(B) SAVINGS PROVISION.—Nothing in
 2 this subsection shall authorize the Commission
 3 to withhold information from the Congress or
 4 prevent the Commission from complying with
 5 an order of a court of the United States in an
 6 action commenced by the United States or the
 7 Commission.”.

8 **SEC. 7. CONFIDENTIALITY; DELAYED NOTICE OF PROCESS.**

9 (a) IN GENERAL.—The Federal Trade Commission
 10 Act (15 U.S.C. 41 et seq.) is amended by inserting after
 11 section 21 the following:

12 **“SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF**
 13 **COMPULSORY PROCESS FOR CERTAIN THIRD**
 14 **PARTIES.**

15 “(a) APPLICATION WITH OTHER LAWS.—The Right
 16 to Financial Privacy Act (12 U.S.C. 3401 et seq.) and
 17 chapter 121 of title 18, United States Code, shall apply
 18 with respect to the Commission, except as otherwise pro-
 19 vided in this section.

20 “(b) PROCEDURES FOR DELAY OF NOTIFICATION OR
 21 PROHIBITION OF DISCLOSURE.—The procedures for delay
 22 of notification or prohibition of disclosure under the Right
 23 to Financial Privacy Act (12 U.S.C. 3401 et seq.) and
 24 chapter 121 of title 18, United States Code, including pro-
 25 cedures for extensions of such delays or prohibitions, shall

1 be available to the Commission, provided that, notwith-
2 standing any provision therein—

3 “(1) a court may issue an order delaying notifi-
4 cation or prohibiting disclosure (including extending
5 such an order) in accordance with the procedures of
6 section 1109 of the Right to Financial Privacy Act
7 (12 U.S.C. 3409) (if notification would otherwise be
8 required under that Act), or section 2705 of title 18,
9 United States Code, (if notification would otherwise
10 be required under chapter 121 of that title), if the
11 presiding judge or magistrate judge finds that there
12 is reason to believe that such notification or disclo-
13 sure may cause an adverse result as defined in sub-
14 section (g) of this section; and

15 “(2) if notification would otherwise be required
16 under chapter 121 of title 18, United States Code,
17 the Commission may delay notification (including ex-
18 tending such a delay) upon the execution of a writ-
19 ten certification in accordance with the procedures
20 of section 2705 of that title if the Commission finds
21 that there is reason to believe that notification may
22 cause an adverse result as defined in subsection (g)
23 of this section.

24 “(c) EX PARTE APPLICATION BY COMMISSION.—

1 “(1) IN GENERAL.—If neither notification nor
2 delayed notification by the Commission is required
3 under the Right to Financial Privacy Act (12 U.S.C.
4 3401 et seq.) or chapter 121 of title 18, United
5 States Code, the Commission may apply ex parte to
6 a presiding judge or magistrate judge for an order
7 prohibiting the recipient of compulsory process
8 issued by the Commission from disclosing to any
9 other person the existence of the process, notwith-
10 standing any law or regulation of the United States,
11 or under the constitution, or any law or regulation,
12 of any State, political subdivision of a State, terri-
13 tory of the United States, or the District of Colum-
14 bia. The presiding judge or magistrate judge may
15 enter such an order granting the requested prohibi-
16 tion of disclosure for a period not to exceed 60 days
17 if there is reason to believe that disclosure may
18 cause an adverse result as defined in subsection (g).
19 The presiding judge or magistrate judge may grant
20 extensions of this order of up to 30 days each in ac-
21 cordance with this subsection, except that in no
22 event shall the prohibition continue in force for more
23 than a total of 9 months.

24 “(2) APPLICATION.—This subsection shall
25 apply only in connection with compulsory process

1 issued by the Commission where the recipient of
2 such process is not a subject of the investigation or
3 proceeding at the time such process is issued.

4 “(3) LIMITATION.—No order issued under this
5 subsection shall prohibit any recipient from dis-
6 closing to a Federal agency that the recipient has re-
7 ceived compulsory process from the Commission.

8 “(d) NO LIABILITY FOR FAILURE TO NOTIFY.—If
9 neither notification nor delayed notification by the Com-
10 mission is required under the Right to Financial Privacy
11 Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18,
12 United States Code, the recipient of compulsory process
13 issued by the Commission under this Act shall not be lia-
14 ble under any law or regulation of the United States, or
15 under the constitution, or any law or regulation, of any
16 State, political subdivision of a State, territory of the
17 United States, or the District of Columbia, or under any
18 contract or other legally enforceable agreement, for failure
19 to provide notice to any person that such process has been
20 issued or that the recipient has provided information in
21 response to such process. The preceding sentence does not
22 exempt any recipient from liability for—

23 “(1) the underlying conduct reported;

24 “(2) a failure to comply with the record reten-
25 tion requirements under section 1104(c) of the

1 Right to Financial Privacy Act (12 U.S.C. 3404),
2 where applicable; or

3 “(3) any failure to comply with any obligation
4 the recipient may have to disclose to a Federal agen-
5 cy that the recipient has received compulsory process
6 from the Commission or intends to provide or has
7 provided information to the Commission in response
8 to such process.

9 “(e) VENUE AND PROCEDURE.—

10 “(1) IN GENERAL.—All judicial proceedings ini-
11 tiated by the Commission under the Right to Finan-
12 cial Privacy Act (12 U.S.C. 3401 et seq.), chapter
13 121 of title 18, United States Code, or this section
14 may be brought in the United States District Court
15 for the District of Columbia or any other appro-
16 priate United States District Court. All ex parte ap-
17 plications by the Commission under this section re-
18 lated to a single investigation may be brought in a
19 single proceeding.

20 “(2) IN CAMERA PROCEEDINGS.—Upon applica-
21 tion by the Commission, all judicial proceedings pur-
22 suant to this section shall be held in camera and the
23 records thereof sealed until expiration of the period
24 of delay or such other date as the presiding judge
25 or magistrate judge may permit.

1 “(f) SECTION NOT TO APPLY TO ANTITRUST INVES-
 2 TIGATIONS OR PROCEEDINGS.—This section shall not
 3 apply to an investigation or proceeding related to the ad-
 4 ministration of Federal antitrust laws or foreign antitrust
 5 laws (as defined in paragraphs (5) and (7), respectively,
 6 of section 12 of the International Antitrust Enforcement
 7 Assistance Act of 1994 (15 U.S.C. 6211).

8 “(g) ADVERSE RESULT DEFINED.—For purposes of
 9 this section the term ‘adverse result’ means—

10 “(1) endangering the life or physical safety of
 11 an individual;

12 “(2) flight from prosecution;

13 “(3) the destruction of, or tampering with, evi-
 14 dence;

15 “(4) the intimidation of potential witnesses; or

16 “(5) otherwise seriously jeopardizing an inves-
 17 tigation or proceeding related to fraudulent or de-
 18 ceptive commercial practices or persons involved in
 19 such practices, or unduly delaying a trial related to
 20 such practices or persons involved in such practices,
 21 including, but not limited to, by—

22 “(A) the transfer outside the territorial
 23 limits of the United States of assets or records
 24 related to fraudulent or deceptive commercial

1 practices or related to persons involved in such
2 practices;

3 “(B) impeding the ability of the Commis-
4 sion to identify persons involved in fraudulent
5 or deceptive commercial practices, or to trace
6 the source or disposition of funds related to
7 such practices; or

8 “(C) the dissipation, fraudulent transfer,
9 or concealment of assets subject to recovery by
10 the Commission.”.

11 (b) CONFORMING AMENDMENT.—Section 16(a)(2) of
12 the Federal Trade Commission Act (15 U.S.C. 56(a)(2))
13 is amended—

14 (1) in subparagraph (C) by striking “or” after
15 the semicolon;

16 (2) in subparagraph (D) by inserting “or” after
17 the semicolon; and

18 (3) by inserting after subparagraph (D) the fol-
19 lowing:

20 “(E) under section 21A of this Act;”.

21 **SEC. 8. PROTECTION FOR VOLUNTARY PROVISION OF IN-**
22 **FORMATION.**

23 The Federal Trade Commission Act (15 U.S.C. 41
24 et seq.) is further amended by adding after section 21A
25 (as added by section 7 of this Act) the following:

1 **“SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF**
2 **INFORMATION.**

3 “(a) IN GENERAL.—

4 “(1) NO LIABILITY FOR PROVIDING CERTAIN
5 MATERIAL.—An entity described in paragraphs (2)
6 or (3) of subsection (d) that voluntarily provides ma-
7 terial to the Commission that such entity reasonably
8 believes is relevant to—

9 “(A) a possible unfair or deceptive act or
10 practice, as defined in section 5(a) of this Act;
11 or

12 “(B) assets subject to recovery by the
13 Commission, including assets located in foreign
14 jurisdictions;

15 shall not be liable to any person under any law or
16 regulation of the United States, or under the con-
17 stitution, or any law or regulation, of any State, po-
18 litical subdivision of a State, territory of the United
19 States, or the District of Columbia, for such provi-
20 sion of material or for any failure to provide notice
21 of such provision of material or of intention to so
22 provide material.

23 “(2) LIMITATIONS.—Nothing in this subsection
24 shall be construed to exempt any such entity from
25 liability—

1 “(A) for the underlying conduct reported;
2 or

3 “(B) to any Federal agency for providing
4 such material or for any failure to comply with
5 any obligation the entity may have to notify a
6 Federal agency prior to providing such material
7 to the Commission.

8 “(b) CERTAIN FINANCIAL INSTITUTIONS.—An entity
9 described in paragraph (1) of subsection (d) shall, in ac-
10 cordance with section 5318(g)(3) of title 31, United States
11 Code, be exempt from liability for making a voluntary dis-
12 closure to the Commission of any possible violation of law
13 or regulation, including—

14 “(1) a disclosure regarding assets, including as-
15 sets located in foreign jurisdictions—

16 “(A) related to possibly fraudulent or de-
17 ceptive commercial practices;

18 “(B) related to persons involved in such
19 practices; or

20 “(C) otherwise subject to recovery by the
21 Commission; or

22 “(2) a disclosure regarding suspicious
23 chargeback rates related to possibly fraudulent or
24 deceptive commercial practices.

1 “(c) CONSUMER COMPLAINTS.—Any entity described
2 in subsection (d) that voluntarily provides consumer com-
3 plaints sent to it, or information contained therein, to the
4 Commission shall not be liable to any person under any
5 law or regulation of the United States, or under the con-
6 stitution, or any law or regulation, of any State, political
7 subdivision of a State, territory of the United States, or
8 the District of Columbia, for such provision of material
9 or for any failure to provide notice of such provision of
10 material or of intention to so provide material. This sub-
11 section shall not provide any exemption from liability for
12 the underlying conduct.

13 “(d) APPLICATION.—This section applies to the fol-
14 lowing entities, whether foreign or domestic:

15 “(1) A financial institution as defined in section
16 5312 of title 31, United States Code.

17 “(2) To the extent not included in paragraph
18 (1), a bank or thrift institution, a commercial bank
19 or trust company, an investment company, a credit
20 card issuer, an operator of a credit card system, and
21 an issuer, redeemer, or cashier of travelers’ checks,
22 money orders, or similar instruments.

23 “(3) A courier service, a commercial mail re-
24 ceiving agency, an industry membership organiza-
25 tion, a payment system provider, a consumer report-

1 ing agency, a domain name registrar or registry act-
 2 ing as such, and a provider of alternative dispute
 3 resolution services.

4 “(4) An Internet service provider or provider of
 5 telephone services.”.

6 **SEC. 9. STAFF EXCHANGES.**

7 The Federal Trade Commission Act (15 U.S.C. 41
 8 et seq.) is amended by adding after section 25 the fol-
 9 lowing new section:

10 **“SEC. 25A. STAFF EXCHANGES.**

11 “(a) IN GENERAL.—The Commission may—

12 “(1) retain or employ officers or employees of
 13 foreign government agencies on a temporary basis as
 14 employees of the Commission pursuant to section 2
 15 of this Act or section 3101 or section 3109 of title
 16 5, United States Code; and

17 “(2) detail officers or employees of the Commis-
 18 sion to work on a temporary basis for appropriate
 19 foreign government agencies.

20 “(b) RECIPROCITY AND REIMBURSEMENT.—The
 21 staff arrangements described in subsection (a) need not
 22 be reciprocal. The Commission may accept payment or re-
 23 imbursement, in cash or in kind, from a foreign govern-
 24 ment agency to which this section is applicable, or pay-
 25 ment or reimbursement made on behalf of such agency,

1 for expenses incurred by the Commission, its members,
 2 and employees in carrying out such arrangements.

3 “(c) STANDARDS OF CONDUCT.—A person appointed
 4 under subsection (a)(1) shall be subject to the provisions
 5 of law relating to ethics, conflicts of interest, corruption,
 6 and any other criminal or civil statute or regulation gov-
 7 erning the standards of conduct for Federal employees
 8 that are applicable to the type of appointment.”.

9 **SEC. 10. INFORMATION SHARING WITH FINANCIAL REGU-**
 10 **LATORS.**

11 Section 1112(e) of the Right to Financial Privacy Act
 12 of 1978 (12 U.S.C. 3412(e)) is amended by inserting “the
 13 Federal Trade Commission,” after “the Securities and Ex-
 14 change Commission,”.

15 **SEC. 11. AUTHORITY TO ACCEPT REIMBURSEMENTS, GIFTS,**
 16 **AND VOLUNTARY AND UNCOMPENSATED**
 17 **SERVICES.**

18 The Federal Trade Commission Act (15 U.S.C. 41
 19 et seq.) is amended—

20 (1) by redesignating section 26 as section 28;

21 and

22 (2) by inserting after section 25A, as added by
 23 section 9 of this Act, the following:

1 **“SEC. 26. REIMBURSEMENT OF EXPENSES.**

2 “The Commission may accept payment or reimburse-
 3 ment, in cash or in kind, from a domestic or foreign law
 4 enforcement agency, or payment or reimbursement made
 5 on behalf of such agency, for expenses incurred by the
 6 Commission, its members, or employees in carrying out
 7 any activity pursuant to a statute administered by the
 8 Commission without regard to any other provision of law.
 9 Any such payments or reimbursements shall be considered
 10 a reimbursement to the appropriated funds of the Com-
 11 mission.

12 **“SEC. 27. GIFTS AND VOLUNTARY AND UNCOMPENSATED**
 13 **SERVICES.**

14 “(a) IN GENERAL.—In furtherance of its functions
 15 the Commission may accept, hold, administer, and use un-
 16 conditional gifts, donations, and bequests of real, personal,
 17 and other property and, notwithstanding section 1342 of
 18 10 title 31, United States Code, accept voluntary and un-
 19 compensated services.

20 “(b) LIMITATIONS.—

21 “(1) CONFLICTS OF INTEREST.—The Commis-
 22 sion shall establish written guidelines setting forth
 23 criteria to be used in determining whether the ac-
 24 ceptance, holding, administration, or use of a gift,
 25 donation, or bequest pursuant to subsection (a)
 26 would reflect unfavorably upon the ability of the

1 Commission or any employee to carry out its respon-
2 sibilities or official duties in a fair and objective
3 manner, or would compromise the integrity or the
4 appearance of the integrity of its programs or any
5 official involved in those programs.

6 “(2) VOLUNTARY SERVICES.—A person who
7 provides voluntary and uncompensated service under
8 subsection (a) shall be considered a Federal em-
9 ployee for purposes of—

10 “(A) chapter 81 of title 5, United States
11 Code, (relating to compensation for injury); and

12 “(B) the provisions of law relating to eth-
13 ics, conflicts of interest, corruption, and any
14 other criminal or civil statute or regulation gov-
15 erning the standards of conduct for Federal
16 employees.

17 “(3) TORT LIABILITY OF VOLUNTEERS.—A per-
18 son who provides voluntary and uncompensated serv-
19 ice under subsection (a), while assigned to duty,
20 shall be deemed a volunteer of a nonprofit organiza-
21 tion or governmental entity for purposes of the Vol-
22 unteer Protection Act of 1997 (42 U.S.C. 14501 et
23 seq.). Subsection (d) of section 4 of such Act (42
24 U.S.C. 14503(d)) shall not apply for purposes of any
25 claim against such volunteer.”.

1 **SEC. 12. PRESERVATION OF EXISTING AUTHORITY.**

2 The authority provided by this Act, and by the Fed-
3 eral Trade Commission Act (15 U.S.C. 41 et seq.) and
4 the Right to Financial Privacy Act (12 U.S.C. 3401 et
5 seq.), as such Acts are amended by this Act, is in addition
6 to, and not in lieu of, any other authority vested in the
7 Federal Trade Commission or any other officer of the
8 United States.

9 **SEC. 13. REPORT.**

10 Not later than 3 years after the date of enactment
11 of this Act, the Federal Trade Commission shall transmit
12 to Congress a report describing its use of and experience
13 with the authority granted by this Act, along with any rec-
14 ommendations for additional legislation. The report shall
15 include—

16 (1) the number of cross-border complaints re-
17 ceived by the Commission;

18 (2) identification of the foreign agencies to
19 which the Commission has provided nonpublic inves-
20 tigative information under this Act;

21 (3) the number of times the Commission has
22 used compulsory process on behalf of foreign law en-
23 forcement agencies pursuant to section 6 of the Fed-
24 eral Trade Commission Act (15 U.S.C. 46), as
25 amended by section 4 of this Act;

1 (4) a list of international agreements and
2 memoranda of understanding executed by the Com-
3 mission that relate to this Act;

4 (5) the number of times the Commission has
5 sought delay of notice pursuant to section 21A of
6 the Federal Trade Commission Act, as added by sec-
7 tion 7 of this Act, and the number of times a court
8 has granted a delay;

9 (6) a description of the types of information
10 private entities have provided voluntarily pursuant to
11 section 21B of the Federal Trade Commission Act,
12 as added by section 8 of this Act;

13 (7) a description of the results of cooperation
14 with foreign law enforcement agencies under section
15 21 of the Federal Trade Commission Act (15 U.S.C.
16 57–2) as amended by section 6 of this Act;

17 (8) an analysis of whether the lack of an ex-
18 emption from the disclosure requirements of section
19 552 of title 5, United States Code, with regard to
20 information or material voluntarily provided relevant
21 to possible unfair or deceptive acts or practices, has
22 hindered the Commission in investigating or engag-
23 ing in enforcement proceedings against such prac-
24 tices; and

- 1 (9) a description of Commission litigation
- 2 brought in foreign courts.

Calendar No. 372

109TH CONGRESS
2^D Session

S. 1608

[Report No. 109-219]

A BILL

To enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes.

MARCH 14, 2006

Reported without amendment